

**Forward Plan reference number: FP/388/04/22**

<b>Report title:</b> Provider of Last Resort Service 2022 - 2023	
<b>Report to:</b> Councillor John Spence, Cabinet Member for Adult Social Care and Health	
<b>Report author:</b> Nick Presmeg, Executive Director for Adult Social Care	
<b>Date:</b> 13 <sup>th</sup> May 2022	<b>For:</b> Decision
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<b>County Divisions affected:</b> All Essex	

## **1. Everyone's Essex**

- 1.1. Providing care and support to those in need of our help is one of our most profound and essential responsibilities.
- 1.2. The Adult Social Care sector in Essex is currently experiencing unprecedented pressure. The long-term trend towards care in the home has accelerated at a speed which has been hard for the market to absorb. At the same time, the impacts of the Covid pandemic are still being felt and wider economic factors are exacerbating matters.
- 1.3. As a result, Essex County Council (the council) needs to make sure we have that provision in place, so that, come what may, there is care and support available to call on when needed.
- 1.4. This is reflected clearly in Everyone's Essex, the council's ambitious plan for our county. It sets out the ambition of health, wellbeing and independence for all ages. Within that aim is a commitment to helping vulnerable people to live independently and free from abuse and neglect, by enabling an effective care market and strong domiciliary support.
- 1.5. In line with all of the above, this report requests approval to re-commission a Provider of Last Resort (POLR) service, as an emergency response, to ensure the Council can meet its statutory duties to provide care and support to vulnerable adults when needed. This service could be deployed to support care homes, other care settings and domiciliary care providers experiencing significant staff shortages as well as to support adults where care and support has not been sourced.
- 1.6. The proposals in this paper do not create any additional climate impacts, which is consistent with our net zero climate commitments set out in Everyone's Essex.

## **2. Recommendations**

- 2.1 To agree to procure a POLR service using the mini-competition process under ECC's Live at Home Framework to be evaluated on 40% price and 60% quality basis to commission shifts of care on a block basis from a maximum of three domiciliary care providers for the period 5 July 2022 to 30 April 2023. The proposed lots are:
- 2.1.1 Lot 1 – Eleven shift patterns of sixteen hours, seven days per week equating to 1,232 hours per week,
  - 2.1.2 Lot 2 – Six shift patterns of sixteen hours and two shift patterns of specialist LD&A trained staff delivering sixteen hours, seven days per week equating to 896 hours per week
  - 2.1.3 Lot 3 – Three (3) shift patterns of twenty-four hours, equating to 504 hours per week.
- 2.2 To agree that the total contract value will be for a maximum of £2.8m, for a maximum of 112,800 hours of cover (2,632 hours per week over circa 43 weeks).
- 2.3 To agree to utilise the block hours to deliver care and support in a range of care settings including care homes and supporting living environments, and to deliver care to Adults in their homes.
- 2.4 To authorise the Director of ASC Essex Operations to approve:
- the award of the contracts following the mini-competition process from the Live at Home Framework; and
  - the ramping up or down of volumes under the awarded contract(s), up to the maximum of 2,632 hours per week and down to a minimum of 1,344 hours per week.

## **3. Background and Proposal**

- 3.1. The health and social care systems continue to be under pressure as a result of staff absences from Covid-19 infections. This applies across the care sector – residential and nursing homes, home care and supported living settings. In addition to this, the demand for domiciliary care is increasing however the domiciliary care market is struggling to recruit and retain workers at the levels needed to meet the increased demand. This is resulting in unprecedented high levels of unsourced domiciliary care.
- 3.2. Essex County Council (ECC) has put in place a number of arrangements to support the care market to address the issues detailed in paragraph 3.1. The POLR service was put in place in January 2021, primarily as an emergency response during the second wave of Covid-19, to support care homes experiencing significant staff shortages resulting from staff isolation, which left care homes unable to safely care for their residents.
- 3.3. Since the third wave of Covid-19, POLR service has continued to be used to support residential care, extra care and supported living settings along with

domiciliary care providers. However, the largest proportion of POLR provision has been to support individual domiciliary care packages from ECC's Unsourced Care List. These packages are on the Unsourced Care List either because they have been handed back by domiciliary care providers or because they are new care package referrals which have not been sourced, via ECC's usual framework or spot purchasing provisions.

- 3.4. From 1 April 2021, the POLR service has supported thirteen care homes, four supported living settings, six domiciliary care providers and 225 adults for whom ECC has been unable to secure care at home. Currently, 45 of those adults have been supported by the POLR service for more than four weeks.
- 3.5. There continues to be pressure on staff resources across the care market as a result of staff absences through covid illness as well as difficulties with workforce recruitment and retention.
- 3.6. A number of initiatives to address the capacity issues within the domiciliary care market are either in progress or have been put in place. These include:
  - 3.6.1. The procurement of domiciliary care block contracts of guaranteed hours of staff time in Braintree and Uttlesford, due to commence in June 2022.
  - 3.6.2. The £1000 incentive scheme for acceptance of packages of care from the unsourced care list.
  - 3.6.3. A range of other workforce recruitment and retention initiatives.
- 3.7. A strategy is also being developed to identify ways to support the market to pick up the more complex care packages, particularly those that have been in the POLR service for more than four weeks.
- 3.8. This proposal seeks to procure a POLR Service to commence on 5 July 2022 (upon expiry of the current POLR Service) and expire on 30 April 2023 (after the 2023 Easter holiday period). This will allow for the initiatives referred to in paragraphs 3.6.1 and 3.6.2 to be implemented and to have an impact, as well as for the development of a longer term strategy.
- 3.9. The tender shall be structured under the following lots with each provider being required to cover to deliver care across the whole of the county. A provider may be awarded a maximum of one lot:
  - 3.9.1 Lot 1 – Eleven shift patterns of sixteen hours, seven days per week equating to 1,232 hours per week,
  - 3.9.2 Lot 2 – Six shift patterns of sixteen hours and two shift patterns of specialist LD&A trained staff delivering sixteen hours, seven days per week equating to 896 hours per week (the provider must hold a position on the LD&A ranked list to be eligible to bid for this lot)
  - 3.9.3 Lot 3 - Three shift patterns of twenty-four hours, equating to 504 hours per week (the provider must hold a position on the 24 hour care ranked list to be eligible to bid for this lot).

- 3.10. This framework is a compliant framework procured by ECC and allows for ECC to run a mini-competition for the services. The contract explicitly covers the ability to issue further procurement documentation, including alternative and/or additional terms and conditions, including a block payment mechanism.
- 3.11. The mini-competition process will be evaluated on a 40% price and 60% quality split.
- 3.12. These shifts shall be purchased on a block basis and ECC shall be obliged to pay for all shifts regardless of whether they are fully utilised. The service is an emergency service and staff may need to be deployed at short notice. Therefore, block purchasing staff time ensures that providers have staff capacity ready and can respond to a request for support, with staff being ready to commence care at the required location within two hours of the request being made, as per the service specification. If a provider does not make staff available in line with the requirements, the contract includes provision for the Council to only pay for the staff capacity available.
- 3.13. The proposed contract value is based on an estimated average hourly fee of £25, which covers provision for staff to be on call and for staff to be fully mobilised and providing care support. However, the actual average hourly rate will depend on the outcome of the tender exercise.
- 3.14. The proposed service is based on a minimum of 1,344 hours and a maximum of 2,632 hours per week, to flex up and down within these thresholds depending on market and system pressures. The service will begin at the maximum level which has been modelled on utilisation of the current service over the last four months, taking into account the capacity that will be available through the domiciliary care block contracts due to commence in July. The minimum levels have been modelled on the lowest level of provision needed to support a range of care settings as well as supporting some packages on the unsourced care list, whilst still making this an attractive proposal to bidders.
- 3.15. There are established processes in place around the deployment of the service. These are detailed below:

#### **Residential Home Settings**

- 3.15.1. The Quality Improvement team will work with providers requiring support to assess their position and the gaps in staffing, and provide any other support or advice required. A director within Adult Social Care would then approve the use of the POLR service.

#### **Care and Support Packages on the Unsourced Care List**

- 3.15.2. This is overseen by Adult Social Care Service Managers who make a risk based decision on whether an adult needs to receive support from a POLR provider as opposed to receiving support through the contracted intermediate care provision or is able to rely on support

through alternative interim arrangements such as a family member, before escalating to an ASC Director if necessary.

- 3.16. As the POLR service is an emergency response to capacity issues, it is expected that there will be a level of voids (unused capacity) each week, ECC will be contractually obligated to pay for these voids. The contracts will include provision to adjust the level of capacity commissioned from providers, and service utilisation will be closely monitored to ensure that there is sufficient spare capacity to respond to requests and cover emerging risks whilst guarding against over-commissioning and excessive levels of voids.

#### **4. Links to our Strategic Ambitions**

- 4.1. This report links to the following aims in the Essex Vision

- Enjoy life into old age
- Strengthen communities through participation

- 4.2. Approving the recommendations in this report will have a neutral impact on the Council's ambition to be net carbon neutral by 2030. We are working on wider improvements as part of our longer-term market shaping strategy, which will have an impact on this ambition.

- 4.3. This report links to the following strategic priorities in the emerging Organisational Strategy 'Everyone's Essex':

- A strong, inclusive and sustainable economy
- Health wellbeing and independence for all ages

#### **5. Options**

- 5.1 Option 1 (recommended):** To commission shifts of care on a block basis under the following lots:

- Lot 1 – Eleven shift patterns of sixteen hours, seven days per week equating to 1,232 hours per week
- Lot 2 – Six shift patterns of sixteen hours and two shift patterns of specialist LD&A trained staff delivering sixteen hours, seven days per week equating to 896 hours per week
- Lot 3 – Three (3) shift patterns of twenty-four hours, equating to 504 hours per week.

- 5.1.1. This option is recommended as it will allow the following benefits for ECC:

- To fulfil its responsibilities under the Care Act to assess for and provide care.
- To maintain capacity and flow across the health and care system.

- 5.1.2. There are risks with this option:

- That the service could deliver more than the system needs, which ECC will have to pay for even if not used. However, the contracts with providers will include provision to reduce the service in line with the minimum threshold, with a four week notice period, in order to manage this risk.

**5.2. Option 2 (not recommended):** Not to put in place POLR arrangements.

**5.2.1.** This option is not recommended as it has the following risks:

- Failure to provide safe care to vulnerable residents required by the Care Act and those who use our services increases the risk of safeguarding concerns.

## **6. Issues for Consideration**

### **6.1. Financial implications**

- 6.1.1. The maximum cost of the recommendations in this report is £2.8m. This includes £282,000 in the 2023/24 financial year. The actual cost will be dependent on the outcome of the tender and the number of hours purchased over the contract period.
- 6.1.2. If the POLR capacity is utilised to support a provider to cover a shift in a care home or on a domiciliary round, the cost of this provision will be reclaimed from the provider who has been supported, where the provider has called on the support on 3 or more occasions or from the point when they have received 100 hours of support. There is a risk that providers will not pay this and that it will need to be met from within the care and support budget.
- 6.1.3. If the POLR capacity is utilised to support an individual care package that is on the unsourced domiciliary need list, the cost of the package will be funded by care and support budgets. This will likely be at a premium cost due to the expected hourly rate and unutilised block activity and will be managed within the total service budget.
- 6.1.4. In the six-week period to 12 May 2022, utilisation across all the existing POLR block purchasing arrangements was 43% (46% excluding the 24-hour shifts), which indicates there is likely to be a high incidence of void capacity in the proposed contracts. This will mean an average hourly rate (including the cost of standby time) that is significantly higher than for domiciliary care purchased through the Live at Home framework. The flexibility to reduce contract volumes will assist with managing the overall financial envelope and maximising value for money.
- 6.1.5. Additional budget was set aside for market pressures in 2022/23 and in year the initial support to providers and standby void costs will be funded from that allocation. This is estimated to be £1.7m of the £2.8m total.

## **6.2. Legal implications**

- 6.2.1 Provider of Last Resort Services fall within “social and other specific services” within Schedule 3 of the Regulations and the total contract value is estimated to exceed the threshold of £663,540 (including VAT). As a result, the procurement of a new POLR service subject to the “light touch regime” of section 7 of Chapter 3 of the Regulations.
- 6.2.2 The Procurement Documents will not include a maximum cap on the hourly rate which can be submitted by bidders. There is therefore a risk that the hourly rate exceeds the estimated value within the published procurement documents and this report.
- 6.2.3 The Council has a duty under the Care Act 2014 to meet an Adult’s eligible care and support needs, one of the ways the Council is able to do this is by way of provision of a Provider of Last Resort Service.
- 6.2.4 In order to satisfy the requirements of the Public Contracts Regulations 2015 regarding modification of contracts during their term, the Contracts will need to include clear and unequivocal review clauses which permit the increase and decrease capacity;

## **7. Equality and Diversity Considerations**

- 7.1. The Public Sector Equality Duty applies to the Council when it makes decisions. The duty requires us to have regard to the need to:
  - (a) Eliminate unlawful discrimination, harassment and victimisation and other behaviour prohibited by the Act. In summary, the Act makes discrimination etc. on the grounds of a protected characteristic unlawful
  - (b) Advance equality of opportunity between people who share a protected characteristic and those who do not.
  - (c) Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.
- 7.2. The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, marriage and civil partnership, race, religion or belief, sex, and sexual orientation. The Act states that ‘marriage and civil partnership’ is not a relevant protected characteristic for (b) or (c) although it is relevant for (a).
- 7.3. The Equalities Comprehensive Impact Assessment indicates that the proposals in this report will not have a disproportionately adverse impact on any people with a particular characteristic

## **8. List of Appendices**

ECIA

## 9. List of Background Papers

None

<b>I approve the above recommendations set out above for the reasons set out in the report.</b>	<b>Date</b>
<b>Councillor John Spence, Cabinet Member for Social Care</b>	<b>25.05.22</b>

**In consultation with:**

<b>Role</b>	<b>Date</b>
<b>Nick Presmeg, Executive Director for Adult Social Care</b>	17 May 2022
<b>Executive Director, Finance and Technology (S151 Officer)</b> <b>Stephanie Mitchener, Director, Finance, on behalf of S151 Officer</b>	20 May 2022
<b>Director, Legal and Assurance (Monitoring Officer)</b> <b>Susan Moussa on behalf of Paul Turner, Monitoring Officer</b>	25 May 2022